APPEAL NO. 92142

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On February 20, 1992, a hearing was held in _____, Texas, with (hearing officer) presiding. She found that claimant, appellant herein, was not injured in the course and scope of her employment. Appellant asserts that there was sufficient evidence upon which to find a compensable injury and that the decision is against the great weight and preponderance of the evidence.

DECISION

Finding that the decision is not against the great weight and preponderance of the evidence, we affirm.

Appellant worked for (employer) as a shipping and receiving clerk from June 1990 to July 19, 1991. Part of her job was to load and deliver boxes of parts and supplies (such as screws) weighing up to 70 pounds. The boxes generally weighed from 40 to 50 pounds and she would usually deliver two small truck loads of from 10 to 50 boxes each per day. She testified that in mid-(date of injury) she began to be bothered by a sharp pain from her hip down her left leg. She also alluded to telling co-employees of her pain but did not associate it with her work at the time. On direct testimony she said she first saw a doctor, Dr. S on June 3, 1991, and after telling him of her symptoms and activities at work, Dr. S said her pinched nerve was work related. She could not recall just what he said about the injury being work related, and on cross-examination she said that when she first went to see a doctor, she knew the injury was work related by the nature of the work. She acknowledged that she had in writing identified the date of injury as both (date of injury) and August 22, 1991, but said that the August 22 date was wrong.

Dr. S repeatedly indicated in her medical record that appellant had lumbar nerve root entrapment even though many tests made no positive findings. Dr. S notes on June 3, the initial visit for this problem, only "deep ache in L (left) leg at night--radiating down from back." He called for bed rest, drugs, and no work until June 10. No record of Dr. S disclosed a reference to a history of work related injury or repetitious physical trauma, nor do the medical records reveal any opinion that the problem could have been caused by repetitious physical acts. Appellant was also seen by Dr. W on June 20, 1991, and his note does indicate that she told him she packs, stacks, and unloads parts at work and started having pain in her left calf about one month before. He added, "States no specific injury."

No witnesses other than appellant testified. Respondent, through transcription of recorded statements, indicated that appellant's supervisor, Mr. L, knew nothing of an injury related to work, although he said that she mentioned her foot hurt and she had a circulation problem. He also said she did not work as if she had a hurt back. Another telephone interview (all were admitted without objection) was taken from employee DL who had worked with appellant. She was very vague not only as to dates but as to what was said. DL's

most specific statement was, "Well, I seen her lifting some boxes over there, and shipping and stuff for, stuff you know, just things like that, and then she told me that um, I asked her what happened, because she was acting like she was hurt, and she was telling me that those boxes and stuff were heavy, and she, you know. . . ."

Appellant quit work on July 19 because she did not get a raise in pay that she thought she deserved. She acknowledged that her departure had nothing to do with the injury. Her notice of injury was dated August 22, 1991, and she gave an injury date of (date of injury). For reasons unknown, on August 30, 1991, she sent a written notice to the personnel department of the employer saying that the injury was on August 22, 1991. A notice of denial of benefits from the Texas Employment Commission was noted as having been mailed on August 19, 1991.

The hearing officer is the sole judge of the weight and credibility of the evidence. Article 8308-6.34(e) of the 1989 Act. While appellant testified as to a repetitive injury, no medical evidence indicated that lumbar nerve root entrapment could have been the result of repetitious physical trauma. Appellant did not give a work related history of injury, either single or repetitious to her treating doctor and provided widely ranging dates as to the injury. Her supervisor did not know of a work problem or injury and a statement of a coworker was vague at best.

The decision of the hearing officer is not so against the great weight and preponderance of the evidence as to be manifestly unjust and wrong. Twin City Fire Ins. Co. v. Grimes, 724 S.W.2d 956 (Tex. App.-Tyler 1987, writ ref'd n.r.e.). The Appeals Panel will not reverse a factual decision on the basis that sufficient evidence existed for the hearing officer to have reached a diffferent decision.

We affirm.

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Susan M. Kelley
Appeals Judge